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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 THOMAS VINCENT GIRARDI,

17 Defendant.
18

No. CR 22-47-JLS-1

GOVERNMENT'S EX PARTE APPLICATION
FOR ACCESS TO THE UNREDACTED
EXPERT REPORT OF DR. DIANA
GOLDSTEIN; DECLARATION OF SCOTT
PAETTY

19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorneys Scott Paetty and Ali
22 Moghaddas, hereby applies ex parte for access to the unredacted
23 expert report of Dr. Diana Goldstein related to defendant Thomas
24 Vincent Girardi's competency proceedings.

25 On a meet and confer telephone call on June 7, 2023, counsel for
26 defendant stated that they do not object to the ex parte nature of
27 the application; however, defendant objects to providing the
28

1 government with the unredacted Goldstein report and intends to file a
2 response to this application.

3 This application is based upon the attached memorandum of points
4 and authorities, the declaration of Scott Paetty, the files and
5 records in this case, and such further evidence and argument as the
6 Court may permit.

7 Dated: June 9, 2023

Respectfully submitted,

8 E. MARTIN ESTRADA
United States Attorney

9 MACK E. JENKINS
10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/
SCOTT PAETTY
13 ALI MOGHADDAS
14 Assistant United States Attorneys

15 Attorneys for Plaintiff
UNITED STATES OF AMERICA
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1 The government, and its expert(s), should have the ability to
2 refer to the entirety of defendant's evaluation, including any
3 statements purportedly implicating defendant's Fifth Amendment
4 right. Accordingly, and in light of the upcoming competency
5 briefing deadlines, the government requests that it be granted
6 immediate access to the unredacted Goldstein report.

7 **II. ARGUMENT**

8 The Court's Order for mental competency evaluation provided
9 defense counsel the opportunity to review the report of the
10 government's expert prior to its release to the government to make
11 any redactions necessary to protect against disclosure of privileged
12 information. (Dkt. 54 at ¶ 4(b)(iii).) The Order also gave the
13 government the right to request in camera review to the extent there
14 were any disputed redactions that could not be resolved. (Id.)

15 Dr. Goldstein provided her report to defense counsel on June 2,
16 2023. (See attached Declaration of Scott Paetty ¶ 2.) That same
17 day, defendant emailed two expert reports to the government, along
18 with an expert disclosure for an attorney expert, Kate Corrigan.
19 (Id.) Defense counsel provided the government with a redacted
20 version of Dr. Goldstein's report on June 5 (the "Redacted Goldstein
21 Report") wherein significant redactions had been applied to nearly
22 ten pages. (Id. at ¶ 3.) The government filed the Redacted
23 Goldstein Report under seal (Dkt. 64) and noted that the government
24 had not yet had an opportunity to review the significant redactions
25 to the report made by defense counsel (see id. at 25, 27-35) and
26 reserved the right to request in camera review of any disputed
27 redactions (Dkt. 61 at ¶ 2). On June 7, 2023, the parties met and
28 conferred via telephone regarding defendant's redactions of the

1 Goldstein report. (Paetty Decl. at ¶ 4.) Counsel for defendant
2 stated that the redactions were based solely on defendant's
3 assertion of his Fifth Amendment right and not on any other
4 assertion of privilege. (Id.)

5 The government agrees that statements made by defendant during
6 the competency evaluations are not admissible against defendant at
7 trial, unless he raises a mental status defense. See Pawlyk v.
8 Wood, 248 F.3d 815, 825 (9th Cir. 2001) ("[A] defendant who asserts
9 a mental status defense lacks a Fifth Amendment right to remain
10 silent regarding the mental status that he has placed at issue.").
11 However, invocation of the Fifth Amendment is not an appropriate
12 justification for redacting defendant's statements from Dr.
13 Goldstein's report for use during the competency determination
14 stage. See generally United States v. Bounds, No. 21-30114, 2022 WL
15 1284302, at *1 (9th Cir. Apr. 29, 2022) (citing Estelle, 451 U.S. at
16 465 (holding that the defendant suffered no deprivation of his Fifth
17 Amendment or Sixth Amendment rights because the findings during his
18 competency evaluation were not used beyond the "limited, neutral
19 purpose of determining his competency."). Indeed, as the Estelle
20 Court held, no Fifth Amendment issue arises where a medical expert's
21 findings are confined to the limited, neutral purpose of determining
22 the defendant's competency to stand trial. See id. Not only are
23 competency hearings entirely distinct in purpose from the guilt
24 phase of trial, but competency hearings do not invoke the same
25 concerns of self-incrimination -- the right Miranda is designed to
26 protect -- that are relevant during the guilt and penalty phases of
27 trial. Huu Thanh Nguyen v. Garcia, 477 F.3d 716, 725 (9th Cir.
28 2007) (holding such concerns have no place at a competency hearing).

The Fifth Amendment privilege against self-incrimination exists to prohibit the government from forcing the defendant to talk and then using the defendant's own statements to satisfy its burden of establishing guilt. The current procedural posture -- a competency determination -- does not involve a determination of guilt. Accordingly, the government and its expert(s) should have access to all of defendant's statements made in connection with his competency evaluation.

III. CONCLUSION

For the reasons above, and because defendant has no Fifth Amendment right that would shield any statements he made to Dr. Goldstein for use during the competency proceedings, the government respectfully requests that the Court grant the government immediate access to the unredacted Goldstein report.¹

Dated: June 9, 2023

Respectfully submitted,

E. MARTIN ESTRADA
United States Attorney

MACK E. JENKINS
Assistant United States Attorney
Chief, Criminal Division

/s/

SCOTT PAETTY
ALI MOGHADDAS
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

¹ To the extent the Court deems it necessary to review the redacted portions of the Goldstein report prior to their release to the government, defense counsel should be ordered to file the unredacted Goldstein report in camera forthwith for the Court's review. However, based on defendant's sole justification of its redactions on Fifth Amendment grounds, the government submits the Court can rule without review of the redacted portions.

DECLARATION OF SCOTT PAETTY

I, SCOTT PAETTY, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I am one of the attorneys assigned to represent the government in this case.

2. On June 2, 2023, the government's expert, Dr. Diana Goldstein, provided her report to defense counsel. That same day, defendant emailed two expert reports to the government along with an expert disclosure for an attorney expert, Kate Corrigan.

3. On June 5, 2023, defense counsel provided the government with a redacted version of Dr. Goldstein's report wherein significant redactions had been applied to nearly ten pages.

4. On June 7, 2023, the parties met and conferred via telephone regarding defendant's redactions of the Goldstein report. Counsel for defendant stated that the redactions were based solely on defendant's assertion of his Fifth Amendment rights and not on any other assertion of privilege.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed in Los Angeles, California, on June 9, 2023.



SCOTT PAETTY